

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., *et al.*,

Plaintiffs,

Case No. 2022-CA-000666

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, *et al.*,

Defendants.

_____ /

**THE FLORIDA HOUSE OF REPRESENTATIVES’
ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, the Florida House of Representatives, answers Plaintiffs’ Complaint for Injunctive and Declaratory Relief, dated April 22, 2022.

1. Admitted that, in 2010, Florida voters approved a proposed amendment that added article III, section 20 to the Florida Constitution. Otherwise, without knowledge and therefore denied.

2. The court decision referenced in this paragraph speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

3. Admitted that the Legislature followed all state and federal legal requirements in good faith. Otherwise, without knowledge and therefore denied.

4. Admitted that the Governor vetoed Committee Substitute for Senate Bill 102 and convened the Legislature in special session. Otherwise, without knowledge and therefore denied.

5. This paragraph states legal conclusions to which no response is required.

6. Admitted that the enacted congressional redistricting plan redraws all congressional districts, including Congressional District 5. Otherwise, the first sentence of this paragraph states legal conclusions to which no response is required. Admitted that, when asked on the House floor whether Congressional District 4 or Congressional District 5 will perform for black candidates of choice, Chair Leek responded, “No.”

7. Admitted that the Governor requested an advisory opinion from the Florida Supreme Court, that a representative appeared on the Governor’s behalf at a legislative committee meeting, that one or more individual legislators affirmed that Benchmark Congressional District 5 was a protected district, and that legislators considered maps that maintained an east-west configuration of Congressional District 5. The last sentence of this paragraph is denied. Otherwise, without knowledge and therefore denied.

8. The second sentence of this paragraph is denied. As to the first and third sentences of this paragraph, without knowledge and therefore denied.

9. As to the first and last sentences of this paragraph, without knowledge and therefore denied. The second sentence states a legal conclusion to which no response is required. The court decision referenced in this paragraph speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

10. This paragraph states legal conclusions to which no response is required.

11. Without knowledge and therefore denied.

12. Without knowledge and therefore denied.

13. Without knowledge and therefore denied.

14. Without knowledge and therefore denied.

15. Without knowledge and therefore denied.

16. Without knowledge and therefore denied.
17. Without knowledge and therefore denied.
18. Without knowledge and therefore denied.
19. Without knowledge and therefore denied.
20. Without knowledge and therefore denied.
21. Without knowledge and therefore denied.
22. Without knowledge and therefore denied.
23. Without knowledge and therefore denied.
24. Without knowledge and therefore denied.
25. Without knowledge and therefore denied.
26. Without knowledge and therefore denied.
27. Without knowledge and therefore denied.

28. Admitted that the Florida Secretary of State is named as an official-capacity defendant in this action. The referenced statute speaks for itself. To the extent the allegations of this paragraph mischaracterize that statute, they are denied.

29. Admitted that the Attorney General was named as an official-capacity defendant in this action, but has since been dismissed. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied. The last sentence of this paragraph states a legal conclusion to which no response is required.

30. The first sentence of this paragraph is admitted. The second sentence of this paragraph states a legal conclusion to which no response is required.

31. The first sentence of this paragraph is admitted. The second sentence of this paragraph states a legal conclusion to which no response is required.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Admitted that, on November 2, 2010, by a margin of 62.9 to 37.1 percent, Florida voters approved a proposed amendment that added article III, section 20 to the Florida Constitution. Admitted that, by a similar margin, Florida voters approved a proposed amendment that added article III, section 21 to the Florida Constitution. The second sentence of this paragraph states legal conclusions to which no response is required. The remainder of this paragraph, including footnote 1, is denied.

37. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

38. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

39. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

40. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

41. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

42. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

43. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

44. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

45. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

46. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

47. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

48. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

49. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

50. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

51. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

52. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

53. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

54. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

55. This paragraph states legal conclusions to which no response is required. The referenced legal authorities speak for themselves. To the extent the allegations of this paragraph mischaracterize those legal authorities, they are denied.

56. The referenced court decisions speak for themselves. To the extent the allegations of this paragraph mischaracterize those court decisions, they are denied.

57. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

58. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

59. The referenced court decisions speak for themselves. To the extent the allegations of this paragraph mischaracterize those court decisions, they are denied.

60. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

61. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

62. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

63. Admitted that, after the Florida Supreme Court issued its decision and relinquished jurisdiction to the trial court, the Legislature convened in a special session that adjourned without agreement on a remedial congressional redistricting plan. As to the second

and third sentences of this paragraph, the referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

64. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

65. Admitted that, on August 12, 2021, the U.S. Census Bureau released in raw format the 2020 Census data needed for redistricting. The second sentence of this paragraph is denied.

66. Admitted that one or more individual legislators asserted that Benchmark Congressional District 5 was a protected district under the Florida Constitution's non-diminishment standard. Otherwise, without knowledge and therefore denied.

67. Admitted that, on January 13, 2022, the Senate Committee on Reapportionment favorably reported Committee Substitute for Senate Bill 102, which included an east-west configuration of Congressional District 5. Admitted that, after adopting an amendment, the Senate passed Committee Substitute for Senate Bill 102 by a vote of 31 to 4. As to the last sentence of this paragraph, without knowledge and therefore denied. Otherwise, the allegations of this paragraph are denied.

68. The first two sentences of this paragraph are denied. Otherwise, without knowledge and therefore denied.

69. Admitted that, on February 1, 2022, the Governor requested the Florida Supreme Court to issue an advisory opinion "on whether Article III, Section 20(a) of the Florida Constitution requires the retention of a district in northern Florida that connects the minority population in Jacksonville with distant and distinct minority populations (either in Leon and Gadsden Counties or outside of Orlando) to ensure sufficient voting strength, even if not a

majority, to elect a candidate of their choice.” Admitted that the Florida Supreme Court declined to issue an advisory opinion. Otherwise, the allegations of this paragraph are denied.

70. Admitted that the black voting-age population of Congressional District 5 in the primary map enacted on March 4, 2022, was 35.3 percent, compared to 46.2 percent in Benchmark Congressional District 5. Admitted that one or more legislators contended that Congressional District 5 in the primary map would afford Black voters an ability to elect representatives of their choice. Otherwise, the allegations of this paragraph are denied.

71. Without knowledge and therefore denied.

72. Admitted that Committee Substitute for Senate Bill 102, as enacted, contained an alternative map, and that the alternative map was scheduled to take effect in the event a court determined that Congressional District 5 in the primary map was invalid under any provision of federal law or the Florida Constitution. Admitted that the alternative map included an east-west configuration of Congressional District 5. Otherwise, without knowledge and therefore denied.

73. Admitted that, on March 29, 2022, the Governor vetoed Committee Substitute for Senate Bill 102 and convened the Legislature in special session. As to the second sentence of this paragraph, without knowledge and therefore denied. Otherwise, the allegations of this paragraph are denied.

74. Admitted that, before the Legislature convened in special session, Speaker Sprowls and Senate President Simpson issued a memorandum to all members of the Legislature. Admitted that the memorandum stated in part that Speaker Sprowls and Senate President Simpson’s intention was “to provide the Governor’s Office opportunities to present that information before House and Senate redistricting committees.” Otherwise, the allegations of this paragraph are denied.

75. Admitted that, on April 13, 2022, J. Alex Kelly, Deputy Chief of Staff to the Governor, submitted the Governor's proposed congressional redistricting plan through the Legislature's public-submission portal.

76. Admitted that Mr. Kelly, Deputy Chief of Staff to the Governor, and Ryan Newman, the Governor's General Counsel, presented the Governor's proposed congressional redistricting plan to the House Redistricting Committee, and that Mr. Kelly presented the Governor's proposed congressional redistricting plan to the Senate Committee on Reapportionment. Otherwise, without knowledge and therefore denied.

77. Denied.

78. Admitted that the Legislature passed Senate Bill 2-C without amendment on April 21, 2022. Admitted that some representatives, including Black representatives, opposed Senate Bill 2-C's passage. Otherwise, the allegations of this paragraph are denied.

79. Admitted that, according to the 2020 Census, Florida has approximately 3.7 million Black residents (single- and multi-race), an increase over the number reported by the 2010 Census. Otherwise, without knowledge and therefore denied.

80. Denied.

81. Without knowledge and therefore denied.

82. Admitted that, according to the 2020 Census, the black voting-age population of Tallahassee is 34.4 percent and that the black-voting age population of Jacksonville is 30.6 percent. Admitted that, according to the 2020 Census, the black voting-age population of Gadsden County is 52.7 percent and that the black voting-age populations of Jefferson, Madison, and Hamilton Counties each exceed 30 percent. Otherwise, without knowledge and therefore denied.

83. Admitted that, according to the 2020 Census, the black voting-age population of Benchmark Congressional District 5 was 46.2 percent. Admitted that, in Benchmark Congressional District 5, Black voters were able to elect representatives of their choice. Admitted that Congressman Al Lawson, a Democrat, received 64.2, 66.8, and 65.1 percent of the vote in the 2016, 2018, and 2020 general elections, respectively. Otherwise, without knowledge and therefore denied.

84. Denied.

85. Denied.

86. Admitted that, in the enacted congressional redistricting plan, Black voters do not have the ability to elect representatives of their choice in any congressional district in North Florida.

87. Denied.

88. Admitted that at least some individual members of the Legislature expressed an intent to comply with state and federal law in redrawing congressional districts. Admitted that Congressional District 5 in the primary map enacted on March 4, 2022, would have afforded Black voters a plausible opportunity to elect representatives of their choice. Admitted that the Governor vetoed Committee Substitute for Senate Bill 102. Otherwise, without knowledge and therefore denied.

89. Without knowledge and therefore denied.

90. Denied.

91. Without knowledge and therefore denied.

92. Without knowledge and therefore denied.

93. Without knowledge and therefore denied.

94. Without knowledge of the thoughts of individual members of the Legislature, and therefore denied.

95. Admitted.

96. Without knowledge and therefore denied.

97. Denied.

98. Admitted that the residents of Congressional District 11 in Senate Bill 2-C are primarily White. Otherwise, the allegations of this paragraph are denied.

99. Without knowledge as to the accuracy of the image, and therefore denied. Otherwise, the allegations of this paragraph are denied.

100. Denied.

101. Without knowledge and therefore denied.

102. Without knowledge and therefore denied.

103. Without knowledge and therefore denied.

104. Without knowledge and therefore denied.

105. Without knowledge and therefore denied.

106. Without knowledge and therefore denied.

107. Without knowledge and therefore denied.

108. Without knowledge and therefore denied.

109. Denied.

110. Denied.

111. Admitted that Benchmark Congressional District 5 elected Al Lawson, a Democrat, to Congress in 2016, 2018, and 2020. Otherwise, without knowledge and therefore denied.

112. Without knowledge and therefore denied.

113. Admitted that the primary map enacted on March 4, 2022, contained a compact, Duval-only district that afforded Black voters a plausible opportunity to elect representatives of their choice. Otherwise, without knowledge and therefore denied.

114. Admitted that the Governor vetoed Committee Substitute for Senate Bill 102. Admitted that Senate Bill 102 divided Jacksonville into two districts and that Congressional District 5 contained part of Jacksonville's Black population. Otherwise, without knowledge and therefore denied.

115. Admitted that Senate Bill 2-C divides Jacksonville into two districts and that both districts include Black population. Without knowledge as to the accuracy of the image, and therefore denied. Otherwise, without knowledge and therefore denied.

116. Admitted that Benchmark Congressional Districts 7, 9, and 10 elected Democrats to Congress in 2016, 2018, and 2020. Otherwise, without knowledge and therefore denied.

117. Without knowledge and therefore denied.

118. Admitted that Benchmark Congressional District 7 was compact and included part of Orlando and the University of Central Florida. The second sentence of this paragraph is admitted. Otherwise, the allegations of this paragraph are denied.

119. Admitted that, according to the 2020 Census, Benchmark Congressional District 7 was overpopulated by nearly 20,000 people. Otherwise, without knowledge and therefore denied.

120. The first sentence of this paragraph is denied. Admitted that Congressional District 7 in Senate Bill 2-C includes southern Volusia County and does not include Orange County. Otherwise, without knowledge and therefore denied.

121. Denied.

122. Admitted.

123. Admitted.

124. The referenced court decision speaks for itself. To the extent the allegations of this paragraph mischaracterize that court decision, they are denied.

125. Denied.

126. Denied.

127. The first two sentences of this paragraph are admitted. The last sentence of this paragraph is denied.

128. Admitted that, in Senate Bill 2-C, Congressional District 14 includes 189,886 residents of Pinellas County who, in the Benchmark Plan, resided in Congressional District 13. Admitted that, according to the 2020 Census, Benchmark Congressional District 13 was underpopulated. Admitted that Senate Bill 2-C divides St. Petersburg into two districts. Otherwise, the allegations of this paragraph are denied.

129. As to the first sentence of this paragraph, without knowledge and therefore denied. The second and third sentences of this paragraph are admitted.

130. The first sentence of this paragraph is denied. Admitted that Palmetto Estates and West Perrine were in Benchmark Congressional District 26 and, in Senate Bill 2-C, are in Congressional District 27. Admitted that Fontainebleau was in Benchmark Congressional District 25 and, in Senate Bill 2-C, is in Congressional Districts 27 and 28. Otherwise, without knowledge and therefore denied.

131. Denied.

132. The House incorporates by reference its responses to the allegations set forth in paragraphs 1 through 131 above.

133. This paragraph states a legal conclusion to which no response is required.

134. This paragraph states a legal conclusion to which no response is required.

135. The House incorporates by reference its responses to the allegations set forth in paragraphs 1 through 131 above.

136. Denied.

137. Denied.

138. The House incorporates by reference its responses to the allegations set forth in paragraphs 1 through 131 above.

139. Denied.

140. The House incorporates by reference its responses to the allegations set forth in paragraphs 1 through 131 above.

141. Denied.

142. The House incorporates by reference its responses to the allegations set forth in paragraphs 1 through 131 above.

143. Denied.

The House denies each allegation except as expressly admitted above. To the extent the headings and footnotes in Plaintiffs' complaint contain allegations, those allegations are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs' complaint fails to state a cause of action.

Second Affirmative Defense

Plaintiffs lack standing to assert the claims set forth in their complaint.

Third Affirmative Defense

Plaintiffs' claims are inconsistent with the Elections Clause of the United States Constitution, which bars the relief that Plaintiffs seek.

Respectfully submitted,

/s/ Andy Bardos

Andy Bardos (FBN 822671)

GRAYROBINSON, P.A.

Post Office Box 11189

Tallahassee, Florida 32302

Telephone: 850-577-9090

andy.bardos@gray-robinson.com

vanessa.reichel@gray-robinson.com

*Attorneys for Defendants, Florida House of
Representatives, Speaker Chris Sprowls,
and Chair Thomas J. Leek*

CERTIFICATE OF SERVICE

I certify that, on June 6, 2022, the foregoing document was furnished by email to all individuals identified on the Service List that follows.

/s/ Andy Bardos

Andy Bardos (FBN 822671)

GRAYROBINSON, P.A.

Post Office Box 11189

Tallahassee, Florida 32302

Telephone: 850-577-9090

andy.bardos@gray-robinson.com

vanessa.reichel@gray-robinson.com

*Attorneys for Defendants, Florida House of
Representatives, Speaker Chris Sprowls,
and Chair Thomas J. Leek*

SERVICE LIST

Frederick S. Wermuth
Thomas A. Zehnder
King, Blackwell, Zehnder & Wermuth, P.A.
P.O. Box 1631
Orlando, Florida 32802
fwerthem@kbzwlaw.com
tzehnder@kbzwlaw.com
Attorneys for Plaintiffs

Mohammad O. Jazil
Gary V. Perko
Michael Beato
Holtzman Vogel Baran Torchinsky &
Josefiak
119 South Monroe Street, Suite 500
Tallahassee, Florida 32301
mjazil@holtzmanvogel.com
gperko@holtzmanvogel.com
mbeato@holtzmanvogel.com
zbennington@holtzmanvogel.com
Attorneys for Defendant, Secretary of State

Daniel E. Nordby
Shutts & Bowen LLP
215 South Monroe Street, Suite 804
Tallahassee, Florida 32301
dnordby@shutts.com
*Attorneys for Defendants, Florida Senate,
Senate President Wilton Simpson, and Chair
Ray Rodrigues*

Bradley R. McVay
Ashley Davis
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com
stephanie.buse@dos.myflorida.com
Attorneys for Defendant, Secretary of State

Abha Khanna
Jonathan P. Hawley
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
akhanna@elias.law
jhawley@elias.law
Attorneys for Plaintiffs

Christina A. Ford
Joseph N. Posimato
Graham W. White
Harleen K. Gambhir
Elias Law Group LLP
10 G Street N.E., Suite 600
Washington, D.C. 20002
cford@elias.law
jposimato@elias.law
gwhite@elias.law
hgambhir@elias.law
Attorneys for Plaintiffs

John M. Devaney
Perkins Coie LLP
700 Thirteenth Street N.W., Suite 600
Washington, D.C. 20005
jdevaney@perkinscoie.com
Attorneys for Plaintiffs